Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1436

THE STATE OF MINNESOTA, RUDY PERPICH, individually and as Governor of the State of Minnesota, WARREN R. LAWSON, M.D., individually and as Commissioner of Health of the Minnesota Department of Health, WARREN SPANNAUS, individually and as Attorney General of the State of Minnesota, their agents, representatives, successors, those acting in concert with them, and all others similarly situated,

Appellants,

vs.

PLANNED PARENTHOOD OF MINNESOTA, a Minnesota non-profit corporation,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION TO AFFIRM THE JUDGMENT

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TABLE OF CONTENTS

	Page
Motion to Affirm the Judgment	1
Opinions Below	2
Statement	2
Argument	5
Conclusion	7

TABLE OF AUTHORITIES

Cases:

Eisenstadt v. Baird, 405 U.S. 438 (1972)	6
Morey v. Doud, 354 U.S. 457 (1957)	6
Shapiro v. Thompson, 394 U.S. 618 (1969)	6
Smith v. Cahoon, 283 U.S. 553 (1931)	6
United States Department of Agriculture v. Moreno, 413 U.S. 528 (1973)	6

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Pursuant to Rules 16 and 35 of the Revised Rules of this Court, Appellee respectfully moves that the judgment of the United States Court of Appeals for the Eighth Circuit be affirmed.

OPINIONS BELOW

The opinion of the United States District Court for the District of Minnesota is unpublished. The opinion of the United States Court of Appeals for the Eighth Circut is reported at 612 F.2d 359 (8th Cir., 1980).

QUESTION PRESENTED

Does the Family Planning Grants Act, Minnesota Session Laws, 1978, Chapter 775, Section 1, Subdivision 2 (Minnesota Statutes Section 145.925, Subd. 2), deny to Planned Parenthood of Minnesota equal protection of the law in violation of the Fourteenth Amendment to the Constitution?

STATEMENT

This is an appeal from the judgment of the United States Court of Appeals for the Eighth Circuit affirming the decision of the United States District Court for the District of Minnesota which held that Subdivision 2 of Minnesota Statutes Section 145.925 is unconstitutional in that it creates an irrational and discriminatory classification which denies to Appellee Planned Parenthood of Minnesota the equal protection of the law in violation of the Fourteenth Amendment to the Constitution.

This action was commenced in United States District Court by Appellee following the enactment of the challenged legislation in 1978. The Family Planning Grants Act (hereinafter "the Act") appropriated $1,300,000 to provide "pre-pregnancy family planning services." The money was to be expended by the making of

special grants to "cities, counties, groups of cities or counties, or nonprofit corporations." Subdivision 2 of the Act provided that no grants or contracts from a grantee could be awarded "to any nonprofit corporation which performs abortions," except hospitals or health maintenance organizations (hereinafter "HMO's). The District Court issued a preliminary injunction enjoining the enforcement of Subdivision 2 of the Act. A trial on the merits was held January 15-17, 1979, and the trial court issued its Memorandum Order granting a permanent injunction on February 23, 1979. The Defendants appealed that Order to the United States Court of Appeals for the Eighth Circuit, which affirmed the District Court decision on January 2, 1980.

There were virtually no controverted facts at the trial. Appellee is one of only two nonprofit corporations that were excluded from funding under Subdivision 2 of the Act. Appellee is by far the largest organized provider of pre-pregnancy family planning services in Minnesota, providing approximately 50% of all such services in the state through its ten clinic locations and a network of family planning workers. Appellee also provides first trimester abortion services at one clinic in St. Paul. Appellee had applied for grant funds under the Act that would pay for pre-pregnancey family planning services that were in addition to, and in no way duplicative of, any of its existing services. Appellee maintains a specialized and detailed accounting system which is utilized to segregate and account for funds which are available only for restricted purposes. Appellee currently administers and accounts for expenditures of restricted private and public funds which cannot be used for abortion services. Appellee's pre-pregnancy

family planning services were shown to be of high quality and in compliance with all federal and state requirements.

The expert evidence established that there was absolutely no inherent difference in the quality or nature of pre-pregnancy family planning services provided by a non-profit corporation which provides abortions as compared to one which does not. The expert evidence further established that there was absolutely no inherent difference in the quality or the nature of pre-pregnancy family planning services provided by hospitals and HMO's as compared to any other nonprofit corporations which provided abortion services. The trial court specifically found that there was no evidence that Appellee's pre-pregnancy family planning services were in any way affected by its decision also to provide abortion services.

The trial court also specifically found that there was no factual evidence to support the argument that funds provided to Appellee under the Act would "free-up" other funds of Appellee and thus indirectly provide funding for abortion services. Not only does Appellee have an accounting system that prevents any mis-application of such funds, but Appellee was also committed to utilization of any funds for new, expanded and additional pre-pregnancy family planning programs, prohibiting the reallocation of funds within the corporation to be used for abortion services.

The trial court was unable to find in the legislative history of the Act any indication of a rational basis for the classification created by Subdivision 2.

The Eighth Circuit Court of Appeals adopted the facts adduced by the District Court, and recited them at length in its opinion, while focusing primarily on the rationality

of any classification distinguishing Appellee from hospitals and HMO's.

ARGUMENT

The classification created by Subdivision 2 of the Act is on its face irrationally discriminatory, even without resort to the facts assembled in support of that conclusion at trial.

First, the Act provides funding only for "pre-pregnancy family planning services" thus, by its own terms, making irrelevant and irrational any reference to post-pregnancy services such as abortion in determining eligibility for the funds.

Second, if one ever could sustain the argument that the performing of post-pregnancy procedures is somehow a factor in one's ability to provide "pre-pregnancy family planning services," then it follows that the distinction between hospitals and HMO's and other abortion providers is irrational. It is particularly irrational if the argument being used to support the distinction between abortion providers and non-providers is that any funding given to abortion providers will of necessity free up monies which could be expended for abortion services.

Finally, if the distinction between nonprofit corporations such as Appellee on the one hand and hospitals and HMO's on the other is shown to be rational and valid, presumably based upon the argument that there is some qualitative or quantitive difference in the ability to deliver services, then the inclusion of nonprofit corporations other than Appellee that are not hospitals and HMO's becomes per se illogical.

The challenged legislation is even more patently and unarguably unconstitutional in light of the facts adduced by the trial court and included in the opinions of both the District Court and the Eighth Circuit Court of Appeals. These findings establish incontrovertibly that there are no facts of any kind that might serve as an arguable basis for the classification created by the Act. The courts below have specifically found that there is no difference between nonprofit corporations that do provide abortions and those that do not in providing pre-pregnancy family planning services. The courts below have specifically found that there is no difference between nonprofit corporations and hospitals and HMO's in the provision of pre-pregnancy family planning services. In fact, as the Court of Appeals opinion pointed out, the challenged exclusionary classification actually operated directly contrary to the legitimate purpose of the Act, the encouragement and expansion of pre-pregnancy family planning services. The exclusionary language has the effect of excluding Appellee, which already has in place an extensive network of staff and facilities with which to effectuate the intent of the legislation so as to reach the greatest number of recipients at the least cost.

The clear unconstitutionality of the challenged portion of the Act is supported by a number of decisions dealing with analogous statutory provisions. The Court of Appeals for the Eighth Circuit relied primarily upon *United States Department of Agriculture v. Moreno*, 413 U.S. 528 (1973). Also instructive are *Smith v. Cahoon*, 283 U.S. 553 (1931); *Morey v. Doud*, 354 U.S. 457 (1957); *Eisenstadt v. Baird*, 405 U.S. 438 (1972); and *Shapiro v. Thompson*, 394 U.S. 618 (1969).

In order to argue that the prior decisions of the District Court and the Court of Appeals for the Eight Circuit are in error, Appellants are placed in the position of arguing that the findings of fact of the two lower courts are clearly erroneous. Yet, as is obvious from the contents of Appellants' Jurisdictional Statement, they can cite no contrary evidence in the record which might tend to impeach the findings of the lower courts. The facts proved by Appellee at trial were unrebutted, and reinforced by testimony from Appellants' own witnesses.

The case viewed as a whole is not one which presents this Court with substantial and difficult questions. Indeed, there is only one question which can be easily resolved in summary fashion after examination of the lower court opinions and the statutory language under challenge. It is a case where the final result to be reached is clearly indicated. It is submitted that the issues herein are therefore unsubstantial, and the lower judgments should be affirmed without noting probable jurisdiction.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Motion to Affirm the Judgment should be granted and the decision of the United States Court of Appeals for the Eighth Circuit should be affirmed.

Respectfully submitted,

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